

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**Abercrombie & Fitch Co. and,  
Abercrombie & Fitch Trading Co.,**

**Plaintiffs,**

**v.**

**Seena International, Inc.,  
J.C. Penney Company, Inc., and  
R.A.G., Inc.,**

**Defendants.**

**Civil Action No. 2:10-cv-910**

**CONSENT JUDGMENT AND  
PERMANENT INJUNCTION  
AGAINST DEFENDANTS SEENA  
INTERNATIONAL, INC. AND  
R.A.G., INC.**

**CONSENT JUDGMENT AND PERMANENT INJUNCTION**

This action, having come on for consideration upon the Complaint of Plaintiffs, Abercrombie & Fitch Co. and Abercrombie & Fitch Trading Co. (collectively, "A & F"), for copyright infringement and unfair competition against Seena International, Inc. ("Defendant Seena") and R.A.G., Inc. ("R.A.G.") (collectively, "Defendants") with regard to A & F's proprietary rights in its t-shirt graphics and jeans, and for willful trademark and copyright infringement against Defendant Seena. The Plaintiffs and Defendants having waived the entry of findings and fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without trial, argument or adjudication of any issue of fact or law, having consented to and stipulated to the entry of this Consent Judgment and Permanent Injunction under the terms provided herein:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**


1. This Court has jurisdiction over the subject matter of this action under the laws of the United States, 15 U.S.C. §§ 1121 *et seq.*, and 28 U.S.C. §§ 1331 and 1338 and supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367(a), and has jurisdiction over Defendant Seena. The claims arising under the laws of the State of Ohio are joined with substantial and related claims under the copyright and trademark laws of the United States.

2. A&F has created certain copyrighted and/or used in interstate commerce certain trademarked designs pictured in the attached Exhibit A, and collectively referred to as the "A & F Designs."

3. Abercrombie & Fitch Trading Co. is the owner of copyright registrations for the six A & F Designs that are protected by copyright: HCO Beach and Parrot Design, Copyright Registration No.: VA 1-733-461; Waxer Surf Design, Copyright Registration No.: VA 1-733-509; Winged Cleat Design, Copyright Registration No.: VA 1-733-512; Fitch Pennant Design, Copyright Registration No.: VA 1-733-516; Life Guard Shack 22 Design, Copyright Registration No.: VA 1-733-505; and Shoot the Pier Design, Copyright Registration No.: VA 1-733-492. Copies of said copyright registrations are attached hereto as Exhibit B. The A & F Designs protected by copyright are original to A & F, and it alone has the exclusive right to control the use, reproduction, adaptation and distribution of the copyrighted A & F Designs.

4. Defendants acknowledge the existence and validity in the United States of the copyright registrations described in Paragraph 3 above and attached as Exhibit B, and the ownership thereof by A & F.

5. A & F is the owner of the following trademarks, among others:

A & F TRADEMARK	TRADEMARK REGISTRATION/APPLICATION INFORMATION
"FITCH"	U.S. Registration Number: 3,827,154 Date: August 3, 2010 Class 25 (Clothing) U.S. Registration Number: 3,304,999 Date: October 2, 2007 Class 25 (Clothing)
	U.S. Application Number: 77555073 Filing Date: August 25, 2008 Class 25 (Clothing)
"UNPARALLELED IN QUALITY"	U.S. Registration Number: 3,296,572 Date: September 25, 2007 Class 25 (Clothing)

6. Abercrombie & Fitch Trading Co. has licensed to Abercrombie & Fitch Co. and its subsidiaries the right to use its registered and common law trademarks in the United States, including the trademarks identified in paragraph 5. Said trademarks appear on A & F's t-shirts bearing the A & F Designs, specifically, the "FITCH" trademark and the Indian Head silhouette trademark ("Indian Head trademark"). A & F also uses the trademark "UNPARALLELED IN QUALITY" on the labels of certain A & F t-shirts. A & F's federal registrations for its FITCH and UNPARALLELED IN QUALITY trademarks were duly and legally issued, and are valid and subsisting. A & F has common law rights to its Indian Head trademark and its federal application to register its Indian Head trademark is pending. Copies of A & F's registrations and application for said trademarks are attached hereto as Exhibit C. As a result of its long use and promotion of these trademarks, A & F has established these trademarks as distinctive, and as

well known and having secondary meaning among actual and target purchasers as well as among members of the public.

7. Defendants acknowledge the existence and validity in the United States of the trademark rights described in Paragraphs 5 and 6 above, and the ownership thereof by A & F.

8. A & F has common law trademark and trade dress rights under federal and Ohio law in the following A & F Designs: the Indian Head Design, the A & F Ath. Design, A & Fitch Ath. Design, and also in the A & F Jeans Pocket Design, all as pictured in Exhibit A.

9. Defendants acknowledge the existence and validity in the United States of the common law trademark and trade dress rights described in Paragraph 8 above, and the ownership thereof by A & F.

10. Examples of Defendants' goods are pictured in the attached Exhibit D.

11. Judgment is entered for A & F on all of its claims, specifically that Defendants have infringed A & F's copyrights under § 106 et seq. of the Copyright Act, infringed A & F's trademarks under § 43 of the Lanham Act, passed off their goods as A & F's and caused likelihood of confusion as to source, sponsorship, approval, affiliation, connection or association under Ohio Rev. Code § 4165.02(A), competed unfairly with A & F under § 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1), and Ohio common law, and have otherwise injured A & F's business reputation and been unjustly enriched; and further that Defendant Seena has infringed A & F's trademarks under § 32 of the Lanham Act.

12. Defendants, their agents, servants, employees, principals, attorneys, and all others in active concert or participation with any of them, are permanently enjoined and restrained from:


- (a) using Plaintiffs' A & F Designs, the "FITCH" trademark, the Indian Head trademark, the "UNPARALLELED IN QUALITY" trademark, and the A & F Jeans Pocket Design (as shown in Exhibits A and D), or any colorable imitation thereof, on or in connection with the design, manufacture, importation, advertisement, promotion, marketing, sale or other distribution of apparel or any other goods;
- (b) doing any other act or thing likely to confuse, mislead, or deceive others into believing that Defendant Seena or its products emanate from, or are affiliated or connected with, or sponsored or approved by, A & F.

13. Defendants acknowledge that a breach of this Consent Judgment and Permanent Injunction by Defendants would result in irreparable injury to Plaintiff, and that in the event of a breach, Plaintiff would be entitled to immediate injunctive relief to enforce this Consent Judgment and Permanent Injunction, damages for past and any ongoing copyright infringement (without deduction of overhead expenses), trademark infringement, and unfair competition, and to reimbursement of its reasonable attorneys' fees and costs arising from bringing an action against Defendants and enforcement of this Consent Judgment and Permanent Injunction.

14. Jurisdiction is retained by this Court for the purpose of enabling A & F to apply to the court in the future for such further orders and directions as may be necessary or appropriate for the enforcement of the terms of this Consent Judgment and Permanent Injunction, as well as to enforce the terms of a separate Settlement Agreement entered into between A & F and Defendant Seena with respect to the subject matter of this action.


15. There being no just reason for delay, the Clerk of this Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Consent Judgment forthwith.

SO ORDERED this 3rd day of December, 2010.

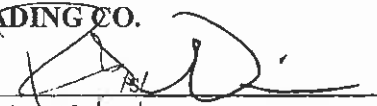
  
Hon. Edmund A. Sargus, Judge  
United States District Court  
Southern District of Ohio

The parties hereby consent to the entry of the foregoing Consent Judgment and Permanent Injunction and waive any and all rights of appeal.

**ABERCROMBIE & FITCH CO.**

By:   
Dated: 12/1/10

**ABERCROMBIE & FITCH  
TRADING CO.**

By:   
Dated: 12/1/10

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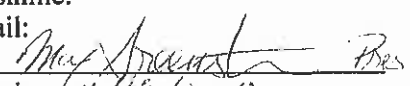
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By:   
Dated: 11/23/10

**R.A.G., INC.**

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By:  Max Greenstein  
Dated: 11/19/2010

MAX GREENSTEIN  
FOR R.A.G., INC.